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EXAMINER

CHEA, PHILIP J

ART UNIT

PAPER NUMBER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/899,435	Applicant(s) OFFER, GERO	
	Examiner PHILIP J. CHEA	Art Unit 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-14, 16-20, 26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-14, 16-20, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to an Amendment filed May 20, 2008. Claims 2-14,16-20,26-27 are currently pending. Any rejection not set forth below has been overcome by the current Amendment.

Drawings

1. The drawings are objected to because proper legends (e.g. word description) do not describe some of the blocks in the Fig. 1. For clarity, please provide appropriate legends. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 26 is objected to because of the following informalities: The term "the server" in at least line 5 is used to refer to "the central server", however, in at least claim 2, line 3, "the central server" is used again. For consistency please use "the central server" when referring to the central server instead of both "the server" AND "the central server".

3. Claim 27 is objected to because of the following informalities: Note line 8, "as part of interactive menu guidance" is apparently "as part of an interactive menu guidance".

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4. Claim 27 is objected to because of the following informalities: The term "the server" in at least line 17 is used to refer to "the central server", however, in at least claim 16, line 3, "the central server" is used again. For consistency please use "the central server" when referring to the central server instead of both "the server" AND "the central server".
5. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 2-4,6-7,9-11,14,19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claim 2 recites the limitation "the distributed control parts" in lines 3 and 7. There is insufficient antecedent basis for this limitation in the claim.
9. Claim 4 recites the limitation "the distributed control parts" in lines 3 and 6. There is insufficient antecedent basis for this limitation in the claim.
10. Claim 6 recites the limitation "the distributed control parts" in line 3. There is insufficient antecedent basis for this limitation in the claim.
11. Claim 7 recites the limitation "the distributed control parts" in line 2. There is insufficient antecedent basis for this limitation in the claim.
12. The Examiner will interpret "the distributed control parts" to mean "the distributed control device".
13. Claim 9 recites the limitation "the validity of software stocks and data stocks" (emphasis added) in line 6. There is insufficient antecedent basis for this limitation in the claim.
14. Claim 10 recites the limitation "the software stocks and the data stocks" (emphasis added) in line 2. There is insufficient antecedent basis for this limitation in the claim.

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15. Claim 14 recites the limitation "software and data stocks" (emphasis added) in line 3. There is insufficient antecedent basis for this limitation in the claim.
16. Claim 19 recites the limitation "the validity of software and data stocks" (emphasis added) in line 8. There is insufficient antecedent basis for this limitation in the claim.
17. Claim 20 recites the limitation "the software and data stocks" (emphasis added) in line 5. There is insufficient antecedent basis for this limitation in the claim.
18. Any claim not specifically mentioned is rejected by virtue of being dependent on a rejected claim.

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 26,7,9,14,19,27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Revashetti (US 6,230,199), and further in view of Nakagawa et al. (US 5,835,911), herein referred to as Nakagawa.

As per claim 26, Revashetti discloses a telecommunications network comprising
a user terminal with a respective predetermined hardware and software configuration (see Fig. 2 [208] *showing a user terminal with predetermined software configuration i.e. applications, operating system, and column 6, lines 1-3, describing the client computer having a predetermined hardware configuration*); and

a central server associated with an access or service provider (see column 5, lines 60-67, *describing a central server that is associated with a service provider i.e. service provider computer*), wherein

the server has a polling device for polling the hardware and software configurations of the terminal (see column 15, lines 11-16, *describing a scan method that scans i.e. polls the hardware and*

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software configuration of the client computer), and a software transmission device for loading software and/or data aligned with the ascertained hardware and software configurations onto the terminals (see column 19, lines 6-18, *showing how data i.e. products that the client may be interested in is transmitted to the client computer based on the hardware and software configuration discovered from the polling* see column 16, lines 52-56),

the terminal having a response transmission device for transmitting a configuration code denoting the hardware and software configurations to the server in response to a polling operation from the polling device (see column 11, lines 5-20, *describing product signature files that are considered the configuration code denoting the products present on a client computer i.e. hardware and software*) and a software reception device for receiving and for internally storing transmitted software and/or data (see column 19, lines 6-18, *showing that data related to the software is stored as a parameter on the client computer*),

the polling device and the response transmission device configured to poll the hardware and software configurations and to transmit the configuration code when the terminal logs into the telecommunication network or at predetermined times or predetermined intervals of time (see column 7, lines 58-67, *describing predetermined times such as when visiting service provider computer that the scanning and transmission of product information would initiate*),

the server and the terminal are provided with a distributed control device for implementing interactive control of the server transmission device (see column 21, lines 29-48, *describing how the server and terminal are interactive in that the server provides the client opportunities to download software updates or buy new products*).

Although the system disclosed by Revashetti shows substantial features of the claimed invention (discussed above), it fails to disclose a plurality of terminals and that the distributed control device is configured for interactively determining a billing mode for downloaded software and/or data.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Revashetti, as evidenced by Nakagawa.

In an analogous art, Nakagawa discloses a software distributing system for updating a client with current software by comparing data from a vendor and data resident on the client computer (see

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Abstract). Nakagawa further shows a plurality of client terminals (see column 9, lines 20-26, *describing a plurality of client computers connected to a vendor computer*) and interactively determining a billing mode for downloaded software and/or data (see column 68, lines 17-29, *describing interactive billing modes that can be used to pay for the software*).

Given the teaching of Nakagawa, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Revashetti by employing interactive control and a charging mode, such as disclosed by Nakagawa, in order to allow the user to choose certain programs they want and different methods of payment that may suit their needs.

As per claim 7, Revashetti further discloses that the distributed control parts are formed as network-specific signaling parts on the basis of at least one of SIM cards, firmware and applets/scripts (see column 11, lines 8-12).

As per claims 9,19, Nakagawa further discloses a validation storage unit for storing at least one of validity data and authorization data in association with predetermined configuration codes as well as a comparison unit that is connected to the storage unit which compares the configuration codes that transmitted by the plurality of terminal devices to stored configuration codes for the purpose of determining at least one of the validity of software stocks and data stocks and the usage authorization of a respective user (see column 68, lines 17-39, *describing an authorization storage unit that matches a configuration code i.e. entry number, and computer model number, with data in the vendor data management data in order to identify the user as an authorized user who completed payment*);

[CLAIM 19] outputting to the plurality of terminal devices, as a result of the comparison, data relating to at least one of the validity of software and data stocks that are stored in the plurality of terminal devices and the usage authorization of the respective user (see column 68, lines 17-39, *showing a warning message to the user if they are not validated and authorized to use the software based on a comparison of the username, password and computer model number, etc*).

As per claim 14, Nakagawa further discloses that the software and data that can be downloaded onto a plurality of terminal devices include update software and update data for updating software and data stocks that are stored in the plurality of terminal devices (see column 67, lines 23-29).

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As per claim 27, Revshetti-Nakagawa disclose a method for operating a telecommunication network, comprising:

polling, when logging into the telecommunication network or at predetermined times or at predetermined intervals of time, current hardware and software configurations for a terminal (see Revshetti column 7, lines 58-67, *describing predetermined times such as when visiting service provider computer that the scanning and transmission of product information would initiate*);

transmitting the current hardware and software configurations of the respective terminal to a central server (see Revshetti column 11, lines 5-20, *describing product signature files that are considered the configuration denoting the products present on a client computer i.e. hardware and software so that the central server can send the correct marketing and product links to the terminal*);

creating offer information for a user of the terminal on the basis of the transmitted hardware and software configurations, and transmitting the offer information to the terminal (see column 5, lines 60-67, *describing implied memory areas such as a product information database and a marketing rule knowledge base of the server where the offers of data i.e. products/marketing opportunities are located to give to the terminal based on the scanning of the hardware and software see Revshetti column 6, lines 13-27 and lines 55-60 and column 11, lines 5-16, describing the configuration code that is used to determine the hardware and software of the client*);

displaying, as part of interactive menu guidance in the terminal, the offer information together with a selection or rejection request (see Revshetti column 21, lines 29-40, *describing how a user may select from different options to i.e. accepting*);

registering a request or rejection signal from the user, which the user has generated, together with the offer information (*i.e. client wants to download software for a related product so server will set up connection with a vendor so the client can receive the downloaded software*);

transmitting billing-mode signals to the terminal (see Nakagawa 68, lines 17-29) and, as part of the interactive menu guidance, are displayed together with the offer information for selection by the user (see Revshetti Fig. 13, *where it is obvious that the billing mode signals described by Nakagawa can be displayed together with the products marketed*);

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registering a billing mode in response to a selection made by the user (see Nakagawa column 68, lines 22-29); and

downloading, in response to the registered request or rejection signal, software and/or data which can be supplied to the terminal and are not yet present thereon, to the terminal from the server (see Revashetti Fig. 13, *showing an interface allowing a user to download data i.e. download shopping links, or learn more links based on a selection i.e. clicking on the link*).

21. Claims 2-4,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Revashetti-Nakagawa as applied to claims 26 and 27 above, and further in view of Achtermann et al. (US 7,191,208), herein referred to as Achtermann).

As per claim 2, Revashetti-Nakagawa further disclose an offer memory in the central server to which the distributed control parts are connected, the offer memory being addressable via the configuration code and having a plurality of memory areas, in each of the memory areas at least one of a software and a data offer which is tuned to a separate hardware and software configuration is listed (see Revashetti column 5, lines 60-67, *describing implied memory areas such as a product information database and a marketing rule knowledge base of the server where the offers of data i.e. products/marketing opportunities are located to give to the terminal based on the scanning of the hardware and software* see column 6, lines 13-27 and lines 55-60 and column 11, lines 5-16, *describing the configuration code that is used to determine the hardware and software of the client*); and

wherein the distributed control parts include an offer transmitting part in the central server, the offer transmitting part for transferring contents of the respectively addressed offer memory area to the respective terminal device that has transmitted a configuration code, a transmission initiation unit in the central server, the transmission initiation unit for activating the transmitting part for loading at least one of software and data from at least one of the tuned software and data offer, an offer display part in each of the plurality of terminal devices for displaying the memory contents of the respectively addressed offer memory area (see column 30, lines 47-62, *describing how data is transmitted to the client based on the hardware and software configuration code that was scanned on the client to present to the client offers of*

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purchasing related products or upgrades), and a requesting part in each of the plurality of terminal devices for selecting offered software and data for loading onto the terminal device, which send a request signal for at least one of desired software and data to the transmission initiation unit of the central server (see column 21, lines 29-40, *describing how a user may select from different options to i.e. accepting*).

Although the system disclosed by Revashetti-Nakagawa shows substantial features of the claimed invention (discussed above), it fails to disclose a reject signal for unwanted software and data.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Revashetti-Nakagawa, as evidenced by Achtermann.

In an analogous art, Achtermann discloses a method of distributing data in a network including a server and an end-user computer, wherein the end-user receives a distribution list from the server and selects from the distribution list (see Abstract). Achtermann further discloses sending a reject signal for a distribution where the server can remove the items in the distribution list (see column 5, lines 48-57, *showing how a user can reject a distribution of software*).

Given the teaching of Achtermann, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Revashetti-Nakagawa by employing a reject signal, such as disclosed by Achtermann, in order to let the server know that some services are not of interest and should be taken off queue for download.

As per claims 3,17 Achtermann further discloses that the central server further includes a reject signal storage area for terminal-device-specific storage of reject signals in association with the transmitted software and data offers, such that the reject signal storage area is allocated to the offer memory on an output side as filter so that software and data offers which are quit via a reject signal are not repeated to a same user (see column 5, lines 57-60, *showing that the server filters i.e. has stored in memory which software to send and to not send, implying that the user will not be repeatedly offered the software that was not desired*).

As per claim 4, Nakagawa further discloses a charging mode memory in the central server to which the distributed control parts are connected, the charging mode memory being allocated to the offer

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memory and having at least one charging mode stored for at least one of each software offer and each data offer (see column 27, lines 19-26); and

wherein the distributed control parts include a charging mode transmitting part in the central server connected to the charging mode memory for responding to the reception of the one of a configuration code and a request signal, a charging mode display part in each of the plurality of terminal devices for displaying the at least one charging mode for at least one of the offered and the selected software and the offered and the selected data, and a charging mode confirmation part in each of the plurality of terminal devices for specifying the charging mode (see column 68, lines 17-34).

22. Claims 5,6,13,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Revashetti-Nakagawa as applied to claims 26 and 27 above, and further in view of Shannon (US 5,799,147).

As per claim 5, although the system disclosed by Revashetti-Nakagawa shows substantial features of the claimed invention (such as transmitting software and data to terminals, discussed above), it fails to disclose that the central server further includes a terminal device operating data memory with a plurality of memory areas for the terminal-device-specific data storage of at least one of software and data that are implemented in the plurality of terminal devices, and operating data receiving and transmitting parts connected to the terminal device operating data memory for transferring the software and data from and to the plurality of terminal devices, and wherein each of the plurality of terminal devices further includes additional operating data transmitting and receiving parts for transferring the software and data to and from the central server.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Revashetti-Nakagawa, as evidenced by Shannon.

In an analogous art, Shannon discloses a computer file backup method which allows a client to backup data onto a server computer (see Abstract). Shannon further discloses that the server further includes a terminal device operating data memory with a plurality of memory areas for the terminal-device-specific data storage of at least one of software and data that are implemented in the plurality of terminal devices (see column 5, lines 35-42, *describing the software having memory areas for the*

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terminal-device-specific data), and operating data receiving and transmitting parts connected to the terminal device operating data memory for transferring the software and data from and to the plurality of terminal devices, and wherein each of the plurality of terminal devices further includes additional operating data transmitting and receiving parts for transferring the software and data to and from the central server (see column 5, lines 35-42, *describing how the terminals have the ability to transmit a logical disk map i.e. software and data stored on the client to the central server, as discussed above, Revashetti-Nakagawa already disclosed receiving parts for receiving data from the central server*).

Given the teaching of Shannon, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Revashetti-Nakagawa by employing transmitting parts to allow a terminal to transmit software and data to the server, such as disclosed by Shannon, in order to backup existing software on the terminal so that the server could restore the terminal if the terminal lost all of its data.

As per claim 6, Shannon further discloses that the operating data receiving and transmitting parts of both the central server and the plurality of terminal devices are so connected to the distributed control parts for implementing the interactive control that the data storage in the central server occurs only upon the selection of a corresponding offer by a user of the terminal device (column 4, line 65 - column 5, line 1, *showing that the transmission of data from the terminal to the server commences only at log-on of the terminal*).

As per claim 13, Revashetti-Nakagawa-Shannon further disclose that the software and data that can be downloaded onto the plurality of terminal devices includes software and data components (see Revashetti column 22, lines 13-29) for implementing auxiliary services that are available in one of the telecommunication network and a data network that is connected to the telecommunication network (see Shannon column 5, lines 35-48, *where the auxiliary service is considered a backup service for the terminal*).

As per claim 16, Shannon further discloses transferring to the central server, when on of the plurality of terminal devices log onto the telecommunication network, at predetermined times, and at time intervals, software and data that is implemented in the plurality of terminal devices for the purpose of data

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storage, and transferring the software (see column 5, lines 34-48) and data by the central server back to the plurality of terminal devices again upon the occurrence of a predetermined condition (*i.e. when computer needs to be recovered, the computer can get the backup image from the server computer*).

23. Claims 8, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Revashetti-Nakagawa as applied to claims 26 and 27 above, and further in view of Pepe et al. (U.S. 5,742,668), herein referred to as Pepe.

As per claims 8 and 18, although Revashetti-Nakagawa disclose substantial features of the claimed invention (discussed above), it fails to directly disclose a central server that acts as an intermediate station in the loading of software and the data onto a first of the plurality of terminal devices by one of a second of the plurality of terminal devices in the telecommunication network and a data terminal device in a data network which is linked to the telecommunication network. However, these features are well known in the art and would have been an obvious modification of the system disclosed by Revashetti-Nakagawa, as evidenced by Pepe.

In an analogous art, Pepe discloses a personal communications internetwork providing a network subscriber with the ability to remotely control the receipt and delivery of wireless and wireline electronic text messages (see Abstract). Pepe further discloses a network with a central server used for transmitting data between devices (see column 10, lines 33-43, *showing that a central server is an intermediary for sending data between two terminals*). Pepe further discloses that the devices can include cellular phones, PDAs, and email from workstations implying telecommunications networks and data networks in communication together where the central server can be an intermediary to pass data between the devices in a telecommunication network or data network (see Figure 1, [32, 30, 22]).

Given the teaching of Pepe et al., a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Revashetti-Nakagawa by employing a central server to act as an intermediate station to pass data between terminals *i.e.* load data from one terminal to another, such as disclosed by Pepe, in order to communicate messages between devices from anywhere at anytime (see Pepe column 1, lines 42-43). Furthermore, one of ordinary skill in the art would have

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recognized that other types of data other than text email could be sent in between the terminals e.g. email attachments with software, music, video, audio, via the central server acting as an intermediary.

24. Claims 10-11,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Revashetti-Nakagawa as applied to claims 9 and 27 above, and further in view of Shear (US 4,977,594).

As per claims 10,20, Revashetti-Nakagawa disclose software stocks and data stocks downloaded into a plurality of terminals (see discussion above). Although the system disclosed by Revashetti-Nakagawa shows substantial features of the claimed invention (discussed above), it fails to disclose that the software stocks and data stocks that are one of implemented in the plurality of terminal devices include application counter elements, the central server further including an arithmetic evaluation unit for evaluating the counter statuses of the application counter elements at one of predetermined times, time intervals, and times when the relevant terminal device logs onto the telecommunication network, for the purpose of achieving a use-based charging mode,

[CLAIM 20] and an evaluation result being transmitted to the plurality of terminals.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Revashetti-Nakagawa, as evidenced by Shear.

In an analogous art, Shear discloses a usage metering system that sends measured quantity information to a remote centralized billing facility and used to charge the user a fee based on database usage (see Abstract). Shear further discloses application counter elements, the central server further including an arithmetic evaluation unit for evaluating the counter statuses of the application counter elements at one of predetermined times, time intervals, and times when the relevant terminal device logs onto the telecommunication network, for the purpose of achieving a use-based charging mode (see column 12, lines 22-30 and column 13, lines 53-56 and column 17, line 59 – column 18, line 9, *describing an arithmetic evaluation unit to determine the billing for the user based on usage at predetermined times i.e. periodically*),

[CLAIM 20] and an evaluation result being transmitted (see column 15, lines 33-47, *describing a detailed bill i.e. evaluation result for the users of the terminal*).

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Given the teaching of Shear, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Revashetti by employing a use-based charging mode for using services, such as disclosed by Shear, in order for the vendor of the software and data to keep track of the software being deployed to charge the appropriate amount to the user.

In considering the evaluation result being transmitted to the plurality of the terminals, Shear discloses that the user receives the usage bill but does not explicitly say that the evaluation results i.e. usage bills are transmitted to the terminals. However, since Nakagawa discloses transmitting bills to user terminals for software (see column 68, lines 17-39, *showing how payment methods i.e. for bills, are requested for new software purchases*), it would have been obvious to one of ordinary skill in the art to also send the use-based bill to the user via the network and to the terminal.

As per claim 11, Nakagawa further discloses an auxiliary information transmission unit which is connected to at least one of the comparison unit and the arithmetic evaluation unit for transmitting messages to the respective terminal device relating to at least one of the validity of implemented software, the usage authorization, and the application counter status for the respective user, the plurality of terminal devices including auxiliary information reception and display units for receiving and displaying the messages (see column 68, lines 17-39, *showing a display of a warning message relating to at least the validity of implemented software*).

25. Claim 12, is rejected under 35 U.S.C. 103(a) as being unpatentable over Revashetti-Nakagawa as applied to claim 26, and further in view of Valentine (U.S. 6,018,654).

As per claim 12, although Revashetti-Nakagawa disclose substantial features of the claimed invention (discussed above), it fails to directly disclose software for implementing non-network-bound auxiliary functions. However, these features are well known in the art and would have been an obvious modification of the system disclosed by Revashetti-Nakagawa, as evidenced by Valentine

Valentine discloses a system with a server with a transmitting part for transmitting software to mobile devices (see Figure 3, [170, 20] *where the software being transmitted is non-network bound* see column 1, lines 44-52, *where tone data is considered non-network bound*).

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Given the teaching of Valentine, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Revashetti-Nakagawa by employing software for implementing non-network-bound functions such as tones data, such as disclosed by Valentine, in order to provide users that are using a handheld device with music that does not take up a lot of memory.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP J. CHEA whose telephone number is (571)272-3951. The examiner can normally be reached on M-F 6:30-4:00 (1st Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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